Mr. Robert Le

Attorney at Law

826 SE Third AVE, STE 302

Portland, Oregon 97214

Dear Mr. Le:

I am a practicing emergency medicine physician licensed in the State of Oregon and certified by the American Board of Emergency Medicine since May 2005. I have been in the continuous and full-time practice of emergency medicine since completing residency training in June of 2004. Since June 2005, I have worked as attending physician of emergency medicine at Salem Hospital Emergency Department. In my career, have evaluated and treated, conservatively, over 50,000 patients. I am experienced in evaluating and treating patients after motor vehicle collisions and patients who have experienced a loss of consciousness. I have published no articles in the past 10 years. I have not testified as an expert at trial or deposition in the past 4 years. My CV is attached for your review. My fees are billed at the rate of $400 an hour. My license and hospital privileges have never been restricted or suspended. There have been no board actions against me.

At your request, I have reviewed the records provided pertaining to the case of Frank E. Doherty and the events of 10/22/2018 (hospital records including testing results from OHSU and his deposition).

Based upon my review of the records and my knowledge, training, and experience, it is my opinion, based upon a reasonable degree of medical probability, that Mr. Doherty did not lose control of the vehicle he was operating due to any medical condition but most likely due to falling asleep.

On 10/22/18 at approximately 3:00 pm, Mr. Doherty lost control of the truck he was operating, and it rolled onto its side. He was taken to the emergency department at OHSU where several injuries were identified, notably compression fractures of T11, T12, and L1 vertebral bodies. The radiologist noted osteopenia and spinal degenerative changes. Labs indicated vitamin D deficiency. CT of the head noted a mucous retention cyst of the left maxillary sinus. He had extensive evaluation including laboratory tests, x-rays, CT scans, cardiac ultrasound, EKG, carotid ultrasound, and subsequently Holter monitor evaluation. Except as noted above, these tests were normal. Prior to the event, he had a history of hypertension, asthma, obesity, gastric sleeve surgery, and sinus cysts with surgical removal. At discharge, he was diagnosed with concussion and syncope of unspecified type, and the fractures.

It is my medical opinion that Mr. Doherty did not experience a syncopal episode. I believe this diagnostic term was used loosely by medical staff. Mr. Doherty's condition is more accurately described simply as a loss of consciousness. Syncope refers to a specific type of loss of consciousness due to decreased perfusion of the brain. Syncope is a clinical diagnosis, meaning there is no specific test to make the diagnosis, but rather the medical opinion of the physician

based on the history and evaluation. There is nothing in his history or medical evaluation to suggest that syncope occurred. Syncope has a trigger and is typically preceded by a prodrome of symptoms, most commonly a feeling of lightheadedness often accompanied by cold sweats and nausea. Syncope can occur without a prodrome, as in cases of sudden cardiac arrhythmia, but there is no evidence to suggest this is what he experienced. It would be very unusual for syncope to occur in a patient while seated, without trigger, and no prodrome.

Loss of consciousness can occur for many reasons, but in the absence of evidence to support a medical condition, and based on the history reported in his deposition, and my experience and training, I believe Mr. Doherty fell asleep at the wheel. Mr. Doherty remembers driving on the Marquam Bridge and a few seconds later, waking up slumped over the steering wheel looking at the cup holder. He reported feeling fine before this loss of consciousness and he was cognitively aware after waking; he remembers looking over the dash and not having hit anything yet. This history suggests nothing more than falling asleep. The collision/s occurred shortly thereafter.

He has multiple risk factors for falling asleep while driving. He woke up at 4 am on the day of the incident. It is therefore reasonable to assume that he was sleep deprived. Furthermore, he more likely than not has undiagnosed and untreated obstructive sleep apnea (OSA). At the time of the incident, he had a BMI of 35 (OHSU records document height of 71 inches and weight of 250 pounds on 10/23/18). The prevalence of OSA in patients with BMI of 35 is over 70% (1). In addition, there is an association between vitamin D deficiency and sleep disorders (2) and he has hypertension, a common complication of sleep apnea. He does not use a CPAP machine, the treatment for OSA. Sleep deprivation and untreated OSA are significant risk factors for falling asleep while driving.

In his deposition, Mr. Doherty reported that several days after the event he remembered seeing some unusual lights as he passed under the OHSU tram across I-5. He reported thinking that this was a weather phenomenon, the “aurora” borealis or northern lights. However, these unusual lights could also be an attempt to describe an aura, changes in sensation that precede certain neurological conditions including migraine headache and seizure. He has no history of migraine and migraine does not lead to loss of consciousness, so the only relevant factor is to consider whether seizure occurred, leading to loss of consciousness. There is no evidence to suggest Mr. Doherty had a seizure. He has no history of seizure before or after. Seizure with loss of consciousness (generalized seizure or complex partial seizure) causes unconsciousness for one to two minutes typically, not a few seconds. Furthermore, seizure with loss of consciousness is followed by an abnormal cognitive state, the postictal period. He does not describe this. Furthermore, his medical evaluation shows none of the lab abnormalities seen with a seizure. He was not diagnosed with seizure, or tongue laceration, of loss of continence. He did not have an EEG and he was not referred to a neurologist. His driver’s license was renewed after a DOT physical. He was not prescribed medications to prevent seizure. This suggests that none of the providers who evaluated Mr. Doherty were concerned about seizure. Therefore, it seems most likely that his memory of the unusual lights may be a false memory. He stated in his deposition that after being diagnosed with syncope, he did research about the diagnosis. Perhaps this research, or discussions he had after the accident, led him to be concerned about seizure as a

cause of his loss of consciousness and he misinterpreted a normal experience (such as flash of light from the tram or a building) for an abnormal experience.

Regardless, Mr. Doherty stated that there was a period of 5 to 10 seconds after he stopped seeing these unusual lights before he briefly lost consciousness and subsequently woke up slumped over the steering wheel. During this period, he successfully navigated the bridge and there is no medical reason to believe he was not capable of operating the vehicle.

The opinions stated above are based upon information and evidence available to me at this time. Should other information and evidence become available, I reserve the right to amend or supplement this opinion.

/s/ Ryan Kirkpatrick

Ryan Kirkpatrick, MD

Board Certified Emergency Physician

Prepared 10/13/2021

Citations:

1. Peter P Lopez , Bianca Stefan, Carl I Schulman, Patricia M Byers. Prevalence of sleep apnea in morbidly obese patients who presented for weight loss surgery evaluation: more evidence for routine screening for obstructive sleep apnea before weight loss surgery. *Am Surg*. 2008 Sep;74(9):834-8.

2. Cindy Lee P Neighbors , Michael W Noller , Sungjin A Song , Soroush Zaghi , John Neighbors , David Feldman , Clete A Kushida , Macario Camacho. Vitamin D and obstructive sleep apnea: a systematic review and meta-analysis. *Sleep Med*. 2018 Mar;43:100-108.

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Work Experience

June 2005 to present	Attending Physician Salem Hospital Emergency Department Salem Emergency Physicians Services (SEPS), PC Chairman, Board of Directors, SEPS (2012-2015) Salem, Oregon
June 2006 to June 2017	Medical Director Chemeketa Community College EMS Programs Salem, Oregon
July 2004 to May 2005	Attending Physician Carondelet St. Joseph's and St. Mary's Hospitals Emergency Department Tucson, Arizona
June 1996 to August 1997	Research Assistant Oregon Health and Science University Department of Neuroimmunology Portland, Oregon

Education

July 2001 to June 2004	Emergency Medicine Residency University of Arizona Tucson, Arizona
Sept. 1997 to June 2001	Medical School Oregon Health and Science University Portland, Oregon (MD, *cum laudae, AOA*)
Sept. 1992 to June 1996	Undergraduate Education Linfield College McMinnville, Oregon (BS chemistry with honors, *summa cum laudae)*

Additional Experience

Vice President for physician scheduling, SEPS, June 2006 to June 2016,
Recruitment Committee, SEPS, June 2006 to present
Physician Leadership Institute, Salem Hospital, fall 2010
Project leader: Reducing mortality from severe sepsis among ER patients
Life Wings communication and teamwork skills workshop, April 2010
Quality Operations Committee, Salem Health Board of Directors, 8/2012 to 8/2015
Coach, First Lego League, 2012 and 2013, regional champions
Neurology recruiting team, Salem Hospital, 2012
Data Committee, Salem Hospital, fall 2012-fall 2015
Board of Directors, SEPS, July 2010 to present
Executive Committee, SEPS, June 2012 - June 2015
Chairman of the Board of Directors, SEPS, June 2012 - June 2015
WVP Health Authority, Board of Governors, June 2015 - present

Professional Memberships, Certifications, Licensure

American Board of Emergency Medicine, certified through12/31/2025
Oregon Medical Board, License MD25545, expiration 12/31/2021
American College of Emergency Physicians, member
AOA Medical Honor Society, member

Awards

Role Model for Excellence Award, Salem Hospital, May 2017
Team Star Award, Salem Hospital, October 2017